IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17524 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHOTUBHAI DALSUKHBHAI VASAVA - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HARIN P RAVAL for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
Shri M.R. Mengdey, AGP for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 3.
MR JOY MATHEW for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

Rule. With the consent of the learned advocates appearing for the parties the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 7/13.6.2005 passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat, in Revision Application No. 32/1998 in dismissing the said revision application preferred by the petitioners. Over and above the submissions made on merits, Shri Harin Raval, learned advocate appearing on behalf of the petitioners, has submitted that though in the impugned order the Additional Chief Secretary has recorded that despite an opportunity no one is present on behalf of the petitioners, in fact the petitioners were not served with the notice of hearing of the said proceedings. This Court had called the Record and Proceedings from the Office of the Additional Chief Secretary to verify the said fact and it appears that though notices were despatched to the petitioners in view of the fact that the same were sent by ordinary post there is no documentary evidence to prove and/or to establish that in fact the notices were served upon the petitioners or not. Therefore, without entering into any further technicalities, the matter deserves remand and it is suggested that the parties may choose a date on which they may appear before the Additional Chief Secretary. Shri Harin Raval, learned advocate appearing on behalf of the petitioners as well as Shri Joy Mathew, learned

advocate appearing on behalf of contesting respondent No.4 have jointly submitted that the petitioners as well as respondent No.4 will make themselves available personally or through their advocates on 19th October 2005 and make submissions before the Additional Chief Secretary.

3. In view of the above, the judgment and order passed by the learned Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 7/13th June 2005 in Revision Application No. 32/1998 is hereby quashed and set aside. The matter is remanded to the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, with a direction to decide the same afresh in accordance with law and on merits after hearing the petitioners, the respondent No.4 and other affected/interested persons, if any, on 19th October 2005 itself. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs. The Office is directed to return/refund the amount of Rs. 5,000/-, deposited by the petitioners pursuant to the order dated 26th August 2005, by Account Payee Cheque to the petitioners.

[M.R. Shah, J.]

RMR.